

REMARKS

Applicant has carefully studied the Office Action of June 13, 2003 and the Myers et al. reference. Applicant further appreciates the telephonic interview of August 5, 2003 with the Examiner at which time the claims and the Myers et al. reference were discussed.

The Office Action of June 13, 2003 rejects claims 1-47 under 35 U.S.C. § 102(e) as being anticipated by Myers et al. Applicant respectfully traverses.

Initially, Applicant notes that, as discussed with the Examiner on August 5, 2003, Myers et al. is commonly owned with the present application. As proof of this, Myers et al. on face issued to Marconi Commerce Systems Inc. The present application was assigned to Marconi Commerce Systems Inc. as evidenced by the assignment recorded at Reel 010537, frame 0866. Further evidence can be seen by virtue of the fact that the law firm of Withrow & Terranova, PLLC prosecuted both applications. If further proof is required, Applicant would be happy to submit it upon request by the Examiner.

For an anticipation rejection to be proper, the Patent Office must show where in the reference each and every claim element is located. Furthermore, the elements of the reference must be arranged as claimed. MPEP § 2131. This is a strict standard that the Patent Office has not met in the present case.

Myers et al. is a pulser that creates a pulse stream that has a predetermined anomaly therein. This anomaly can be seen by comparing the pulse stream of Figure 5 with the normal pulse stream of Figure 3. As described in column 2, lines 21-35, Myers et al. can compare the actual pulse streams, or, as described at column 8, lines 16-28, can compare the number of routine pulses between signature pulses. In the latter case, Myers et al. works by (with reference to Figure 8B) determining the number of routine pulses between each signature pulse (step 140) and comparing this number to the target number (step 145). Thus, if Figure 5 is the pulse stream, there should be eleven routine pulses 502 between signature pulse 504. If the number eleven is not reported, then there may be fraud present. What is important to realize is that Myers et al. is not comparing fuel flow rates *per se*. Myers et al. is comparing a pulse stream indicative of a fuel flow rate or a number of pulses in a pulse stream. The pulse stream is not an amount of fuel alleged to be dispensed, but rather is a pulse stream. This pulse stream can be used to derive an amount of fuel alleged to be dispensed, but under the strict scrutiny required in an anticipation analysis, the pulse stream is not an amount of fuel alleged to be dispensed.

In contrast, the present invention, as claimed in the independent claims, recites "reporting an amount of fuel alleged to be dispensed to create a reported amount . . . comparing the reported amount to a reference related to a flow rate of the fuel dispensed during the fueling transaction . . ." (claim 1). This claim clearly indicates that the reported amount (which comes from the amount of fuel alleged to be dispensed) is compared to the reference. As discussed above, Myers et al. does not compare the reported amount to the reference. Since Myers et al. does not compare the reported amount to the reference, there can be no anticipation of claim 1.

Claims 2-21 depend from claim 1 and are not anticipated at least for the same reasons that claim 1 is not anticipated.

Claim 22 also recited reported amounts and comparing the reported amounts to a reference. As explained above, these elements are not shown by Myers et al. because Myers et al. is comparing a pulse stream or a number of pulses. As discussed with the Examiner, the pulse stream, or a number of pulses, is not the same thing as the reported amount, and there can be no anticipation.

Claims 23-26 depend from claim 22 and are not anticipated for at least the same reasons that claim 22 is not anticipated.

Claim 27 recites, in element c, comparing the reference to a reported amount of fuel. As explained above, these two elements are not shown by Myers et al., and claim 27, therefore, is not anticipated by Myers et al.

Claims 28-35 depend from claim 27 and are not anticipated for at least the same reasons that claim 27 is not anticipated.

Claim 36 recites "receive a reported amount of fuel . . . [and] compare the reported amount to a reference . . ." As explained above, these two elements are not shown by Myers et al., and claim 36 is not anticipated.

Claims 37-39 depend from claim 26 and are not anticipated for at least the same reasons that claim 36 is not anticipated.

Claim 40 recites "receive data related to a reported amount . . . [and] compare the data related to a reported amount to a reference . . ." Further comparison is done at a computer remotely positioned from the fueling environment. Even if the pulse sequence is construed to be related to a reported amount (a point which Applicant does not concede), Myers et al. does not

perform his comparison at a computer remote from the fueling environment. Thus, claim 40 is not anticipated by Myers et al.

Claims 41-44 depend from claim 40 and are not anticipated for at least the same reasons that claim 40 is not anticipated.

Claim 45 recites that the comparison is done between data relating to a flow rate and data derived from a device that is positioned outside the fuel dispenser. As discussed with the Examiner, this device outside the fuel dispenser may be the pump or other device which can independently provide some estimate of a flow rate. This is not done by Myers et al.

Claim 46 recites that the reference is compared to the reported amount. As discussed above, these elements are not shown by Myers et al., and claim 46 is not anticipated.

Applicant requests reconsideration of the rejection in light of the differences explained during the telephonic interview and highlighted herein. If the Examiner has further questions or Applicant needs to clarify the arguments presented herein, the Examiner is invited to contact the undersigned.

Respectfully submitted,
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